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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,434	08/22/2003	Gregory James Olsen	1171/40069B	9168

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EXAMINER

LEWIS, AARON J

ART UNIT PAPER NUMBER

3743

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/646,434

Applicant(s)

OLSEN ET AL.

Examiner

AARON J. LEWIS

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05/25/2005 (RCE AND AMENDMENT).
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 6-11 and 13-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 8-11, 13 and 16 is/are rejected.
- 7) ☒ Claim(s) 6, 7, 14, 15 and 17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 05/25/2005 has been entered.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 7 recites the limitation "...said body portion..." in line 2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-4, 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Ogden et al. ('101).

As to claim 1, Ogden et al. disclose a device for delivering a supply of gases to a user comprising or including: a patient interface (3), adapted to be in fluid

communication with said supply (col.5, lines 41-43) of gases and said user in at least a correct orientation and position on said user (col.6, lines 2-4), headgear (13R,13L,15R,15L,17,9) adapted to attach to or around the head of said user (fig.1), and a flexible sliding strap (any one of straps 13R,13L,15R,15L,17 slide within slots 27,29,31) between said headgear and said patient interface.

As to claim 2, Ogden et al. (e.g. fig.1) disclose said patient interface is a nasal mask (3).

As to claim 3, Ogden et al. disclose said nasal mask (3) comprises or includes a body portion having an inlet (12,20) receiving said supply of gases, and sealing means (5) attached to or integrated with said body portion said sealing means adapted to seal against the facial contours of said user.

As to claim 4, Ogden et al. disclose said sliding strap (any one of straps 13R,13L,15R,15L,17) is a low resistance strap slidably connected on, through, adjacent (via slots 27,29,31) or with said patient interface and adapted to allow said headgear substantial movement with respect to said nasal mask, while still providing compressive force on said sealing means to ensure said supply of gases is delivered to said user without significant leakage (col.6, lines 2-4).

As to claim 16, Ogden et al. (fig.1) disclose a nasal mask for delivering gases to a user comprising or including: a body portion (3) having an inlet (12,20), in use said inlet receiving a supply of gases (col.5, lines 41-43), abutting means (5) engaged with said body portion for abutting against the facial contours of said user, a flexible sliding strap (any one of 13R,13L,15R,15L,17 slide within slots 27,29,31) and engaging means (9)

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for providing a sliding engagement with said sliding strap (13R,13L,15R,15L,17,9), and a compressive force (from straps 13,15,17) on said abutting means.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 8-11,13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogden et al. ('101).

The equivalency of patient interfaces in the respiratory art is well known and established practice. That is, the mere substitution of a one patient interface (e.g. a mask for a mouthpiece or a mask for an endotracheal tube would have been an obvious matter of design choice with no new or unobvious results accruing. Similarly, the mere substitution of a full oral nasal mask for an nasal mask constitutes mere substitution of one mask for another. The interchangeability of these well known patient interfaces would have accomplished the delivery of breathable gases to a patient in an equivalent manner; no one patient interface would have provided the breathable gases to a patient in any manner which would have been superior to another. Finally, a review of the instant specification does not reveal any criticality in the particular patient interface being employed.

As to claim 13, while Ogden et al. is silent as to the particular material from which straps (13,15,17) are made except to disclose that they are made from flexible and

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elastic material (col.3, lines 22-24), the particular material can be arrived at through mere routine obvious experimentation and observation with no criticality seen in any particular material including polyacetal. Applicant has not attached criticality to the particular material and it is submitted that a material which is both flexible and elastic as disclosed by Ogden et al. would have performed equally to that of a strap made from polyacetal.

***Allowable Subject Matter***

8. Claims 6,14,15,17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claim 7 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Response to Arguments***


10. Applicant's arguments with respect to claims 1-4,6-11,13-17 have been considered but are moot in view of the new ground(s) of rejection.

While Ogden et al. remains the base reference, a new position with respect to the new claim limitation "...a flexible sliding strap..." has been taken.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON J. LEWIS whose telephone number is (571) 272-4795. The examiner can normally be reached on 9:30AM-6:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HENRY A. BENNETT can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
AARON J. LEWIS  
Primary Examiner  
Art Unit 3743

Aaron J. Lewis  
June 26, 2005